

## Stoddard, Jamey

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**From:** Rader, Cliff  
**Sent:** Monday, November 17, 2014 11:47 AM  
**To:** Heather Kendall-Miller; Edgell, Joe  
**Cc:** Stoddard, Jamey; bryne.andrew@epa.gov  
**Subject:** RE: Chu'it'na Coal project and 106 obligations

Heather –

Thanks; I appreciated the opportunity to meet you and other representatives of the NVT at the Nov 12 meeting.

I'll take a look at the materials and talk to our Region 10 counterparts and get back to you.

- Cliff

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**From:** Heather Kendall-Miller [mailto:kendall@narf.org]  
**Sent:** Friday, November 14, 2014 9:13 PM  
**To:** Rader, Cliff; Edgell, Joe  
**Cc:** Stoddard, Jamey; bryne.andrew@epa.gov  
**Subject:** Chu'it'na Coal project and 106 obligations

Hi Cliff and Joe,

Thanks much for participating with others at EPA during its government-to government consultation with the Native Community of Tyonek (NVT) on Wednesday, November 12<sup>th</sup>. I greatly appreciate your willingness to join us at such short notice. Since we haven't had prior communication on the specific project that was the subject of our visit, I have attached a letter that was sent to EPA on April 2, 2013, that offers some context.

From the Sec. 106 perspective, a lot has been accomplished in the past year beyond what was articulated in the attached letter. I have therefore also attached a secondary short memo that chronicles our 106 work in 2013 through the present.

As noted in our meeting, NVT anticipates that we will get a favorable finding of illegibility from the Keeper on the paper we shared with you entitled "The Case for a Ch'uit'na Traditional Cultural Landscape, Cook Inlet, Alaska" within the coming months. As you may be aware, the finding of illegibility (under the Historic Preservation Act) for a broader cultural landscape which includes the mouth of the Chuitna River as well as several of its major tributaries, would require the Corp to undertake an analysis of adverse impacts (both direct and indirect) on the River itself and assess avoidance, mitigation, or alternatives to avoid impacts to the water, fish, and a living culture that has relied on the fish as a key-stone species for the past 1,000 years.

An issue that we expect to come up that may require other agency input, is the fact that the Corp. may attempt to exercise its authority narrowly. 36 C.F.R. Part 800 identifies historic properties and considers effects within an area or areas of potential effect on the APE, defined to include all those areas in which an undertaking may have direct or indirect impacts on historic places or properties. Appendix C (which the Corp. follows) limits identification and effect to the "permit area" that represents only the area that the Corp. has jurisdiction over. The result is that the Corp. will focus

its attention on effects that will occur within the area over which it exercises jurisdiction, not the more expansive areas where direct and indirect effects are likely to occur.

We believe that there is a serious question whether the Corp. can limit its jurisdiction such, when it is in fact acting as lead agency, with other agencies that are assessing this undertaking but have a broader interpretation of their legal obligations. At this stage, we are working within the NEPA co-operating stage but feel that Sec. 106 issues have to be given meaningful application early on. We would ask EPA's support and concurrence that the Corp. must respect the broader legal obligations of other co-operating agencies when assessing impacts and effects.

Thanks much,

Heather Kendall-Miller  
Native American Rights Fund  
On behalf of Tyonek Native Community